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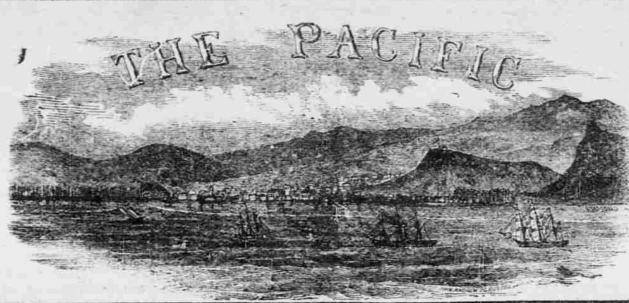
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my 15 80

VOL. XXVIII-NO. 27.

HAWAIIAN TREATY

upon it.

and in the public prints, I appointed a com-

mission of three trustworthy persons (one

of whom was nominated by prominent

representatives of the sugar trade in New

York) to go to San Francisco and Portland,

Oregon, and, if necessary, to the Hawaiian

Islands, to fully investigate the matter.

Their report, which will be duly trans-

mitted to Congress, fails to show that such

charges have any foundation. It tends

strongly to prove that the character of the

sugar imported from these Islands since

the treaty went into operation is essentially

the same as that which was imported prior

to the treaty, both as regards the grade of

sugar admitted and its country of origin;

and that the treaty has been fairly executed.

The industry and free market opened,

have given rise to a trade, in its nature and

a wide range of articles affecting profitably

the American farmer, grocer and manu-

farm use as well as the larger manufacturer

in metals, and of machinery and cotton.

The exports in these commodoties have so

grown that the trade of San Francisco with

the Hawaiian Islands is its third in impor-

tance, being equalled only by that with

Great Britain and China, and exceeding

that of Mexico, Australia, or British Co-

Many of the articles of this trade, such as

hay, grain, lumber, etc., are so bulky that

they employ a shipping large in proportion

to their value and much of this is Ameri-

The impetus given to Hawalian inter-is-

land commerce, has also inured to the ben-

efit of Americans, in calling for coasting

steamers and sailing vessels, which

The balance of trade growing from the

earnings of American commerce-the com-

missions of merchants and bankers, and the

profits of American citizens-is believed to

be in favor of this country; as the course of

exchange, as this department is informed,

is constantly against the Hawajian remit-

ter to the extent of from 11 to 2 per cent.

To reconcile this with the statements of the

values of exports from this country to Ha-

waii, and of the imports into this country

from that, which show an excess of imports

the fact must be weighed that the commo-

dities landed there from here have an added

should be put to that side of the account.

average duty of \$3 18 per 100 pounds. Yet

there is a countervailing benefit to our cit-

has received some benefit is thus shown,

fore and since the treaty, being an average

of \$11 cents per pound in favor of the con-

sumer since the treaty. Thus the loss in

revenue is on a trade which might not ex-

1st but for this benificent operation of the

\*Export values of merchandise from San Fran-

The above figures are taken from the San Fran-

†Number of vessels built in United Stated Pa-cific ports for coasting trade of the islands : Sail-

ing vessels, 25; steamers, 11; built in Atlantic

ports for coasting. 1 steamer of 1,600 tons; built

Francisco and Honolulu, 2 steamers, each 3,000

n Atlantic ports for ocean service between San-

Arrivals at the Hotel.

The following guests were registered at the Ho-

Gay and wife, S. Lefavor, F. J. Wooster Isaacson,

Henry Crothed, A. Speed Webster, N. E. Willfong,

ington, Daniel E. Bandmann, Miss Louise Beaudet

Chas. Lobbett, William Redmond, and J. I. Dal-

2,371,548 1,645,544

1,248,447

cisco for the year 1882, to the following countries :

Mexico .....

tons .- | S. F. Bulletin, Dec. 13.

Hawaiian Islands

have been built in American ports.

telligence, fidelity and thoroughness.

seemed to have been overlooked:

HONOLULU, HAWAIIAN ISLANDS, DECEMBER 29, 1883.

LETTER FROM DR. RUTH. U. S. S. ESSEX."

Report of the Secretary of the Treasury Orator on the 4th July, 1883, at the Celebration of the Day at the Hawaiian Hotel. In the telegraphic report of the official

documents submitted to Congress, the fol-The following interesting letter has kindly lowing comments of the Secretary of the been sent to us by the 4th July Commit-Treasury, on the Hawaiian Treaty-a subtee, and it affords us great pleasure in pubject of considerable interest to Californialishing the same. It will be remembered by all, that a valuable gold headed cane Charges of fraud and irregularity in the accompanied by a letter was forwarded to administration of the law enacted to carry | Dr. Ruth for the valuable services he renout the treaty with Hawaii, so far as con- dered on the 4th July, 1883, to which he re- the Interior Department shall lay Cefore the Councerns the exemption of sugars from duty, plies in the following terms :having been made both in public bodies

U. S. "Essex," NAGASAKI, JAPAN, November 8th, 1883.

GENTLEMEN :-By the courtesy of Captain Henry Erben, U. S. commanding the U. S. S. "Pensacola" and Commander A. H. McCormick, commanding the U. S. S. "Essex," I am in receipt of the beautiful and valuable gift sent me by the American resi-They were given the fullest latitude to dents of the Hawaiian Islands. The letter accomexamine into all branches of the subject, | panying it is so flattering that I have no words in and have executed the commission with in- which to reply, and can only say that the sentiments of friendship therein expressed are most heartily reciprocated by the officers of the "Essex,"

and by myself. The stay of our little ship at your enchanting Island was so replete with pleasure; your hospitality was so generous and your welcome so hearty that we would indeed be ingrates, did we forget it or you. And apart from this grosser side, there was a spontaneity and affection about your greeting that was especially delightful to us, who had so long been separate from companionship with those of our own nationality and blood.

The statement in the report that the sugar We hope that in the near future-the nearer the interest is largely other than American has better-we may once more meet you all; that we may once more grasp your friendly hands, and firmed Mr. Justice Clifford (p. 312) that,"though landing at Honokaa is almost finished and will be called forth from the Hawaiian Government a counter statement with a table once more enjoy the luxury of association with a showing that of \$15,886,800 of asserted society, which, although isolated, preserves in the plantation property, over \$10,000,000 is extreme, its freshness, its purity, and its soul.

The fact that the wood of which the cane was owned by American citizens. This large interest, it is claimed, is a growth from the | made was cut from a tree that grew near the spot treaty, and that it is profitable to the where the celebrated Captain Cook lost his life, does to a certain extent enhance its value, but alowners, many of whom are residents in this though the connection is interesting, the beauty of the cane great, its workmanship exquisite, and its intrinsic value large, I shall value it for none of these but for the kindly feeling that prompted effects like our inter-State trade, covering | you to give it to me, and because it is a souvenir, not only of an occasion which reflects the greatest honor on the American residents of the Hawaiian Islands, but of a "Red Letter" day of my life. facturer or small articles of household and With the heartiest wishes for the prosperity and happiness of each, and every American residing in the Hawaiian Kingdom, and with the hope that the fortune of each may flourish, and again with thanks for your splendid gift, I am gentlemen.

Most sincerely and faithfully yours, Surgeon U. S. Navy.

JOHN S. McGREW, Esq., M. D., Chairman of the General Committee. H. M. WHITNEY, Esq., J. R. MORRILL. Esq., J. SIMONSON, JR., Esq.,

J. E. WISEMAN, Esq., The American residents of Honolulu, Hawaiian

# SUPREME COURT.

Special Term for the hearing of Cases in

ON THE BENCH, JUDD, C. J., McCULLY & AUSTIN, J. J.

Saturday, December 22nd, 1883. The Gazette Mandamus. R. GRIEVE AND A. T. ATRINSON, VS. CHAS. T. GU-LICK, MINISTER OF THE INTERIOR.

Mr. A. S. Hartwell for the plaintiffs, respond-His Ex. Paul Neumann, Attorney-General, and Mr. W. A. Whiting for the defendant, appellant. This case arises on a return to an order, issued on the plaintiffs' sworn petition; to show cause

value when they reach there, from the cost of carriage which adheres to them. The why a writ of mandamus should not issue to the carriage is by American vessels mostly, and defendant, requiring him to present to the King in the cost of carriage earned by our citizens Privy Council the plaintiffs' petition for a charter of incorporation. Mr. Hartwell said, in opening the case for the The report of the commission shows that the respondents, "In order that I may be underbut for the free entry awarded by the treaty stood clearly in this case, and possibly reported the revenue on the sugar imported would

correctly, I will read my points which I desire to have been about \$3,000,000, computed at an present in this case, and will also state the positions which I do not take, and thereby enable the respondent's counsel to save time in argueing izens. The increase in value of Hawaiian iews which I do not argue. sugar has been but \$1 57 per 100 pounds. I. The statutes of the Kingdom make it the As the sugar comes in free it may not have official public duty of the Minister of the Interior been as strictly classified as that on which at some seasonable time to lay before the Privy duty is assessed. That the consumer

Council all applications for charters which are in conformity with the statutes and with the law, and this notion is confirmed by the and are for objects for which charter can lawfully market price of sugar in San Francisco be- | be granted. It is not for him to say that he will obtain the

advice of the Privy Council on one charter and will not do so in another, providing that both are in legal form and for legal objects. To hold that the Minister has discretionary power to determine whether he will or will not present any such documents would be subversive of the equal rights of all men secured by the Constitution, and of the duty of a Minister of the Interior to perform "im-4,149,393 The privilege of right, as it may be, of obtaining the advice of the Privy Council, is or ought to be extremely valuable. If the Minister at his option can deny that right to any applicant,, he can deny it to all. If he can admit such right to some and cisco Journal of Commerce, annual edition, Janu- deny it to others, then all manner of abuses, partiality and corruption would be practicable. All the abuses concerning the sales of charters which existed in the time of the Charleses and the Jameses could easily creep in. The Constitution and laws deny to a Minister such dangerous

> discretionary powers. The defendant in his demurrer takes the view that the Court has no jurisdiction because " there is no law or statute of this realm" (as alleged in to present such petitions for a Charter of Incor- followed the submission. poration to the King in Privy Council." It is not essential that every official duty of any officer, high or low, shall minutely be specified by statute.

I do not claim, in this case, that the Court can enforce by a writ of mandamus a duty the performance of which is discretionary with the officer. The ground which I take in this case, as in that of yesterday, is that wherever it is a clear. imperative duty required by law to be performed by an officer, the Court can compel such performance, on a proper application.

If the view of the respondent is correct the stat. Mr. Preston consenting, the Court ordered the ute could read as follows: "It shall be dis- ease to be so continued.

cretionary with the Minister of the Interior to lay before the King in Privy Council, or not, as he likes, any lawful application for a lawful charter.' How would that read?

II. The respondent claims that the petition is insufficient because it does not ever demand and refusal. The petition does aver that the respondent "has utterly failed and refused, and still fails and refuses to present the application for a charter to the King in Privy Council." There can be no refusal of that which has not been demanded. Moreover, the cases and authorities are, I believe, only claimed to go to the extent of requiring that a prior demand be made is cases when the duty is only a private, and not a public duty. It is both a public and also a private duty that the head of

form and for legal objects. . But the petition avers that the petitioners last April filed in the office of the Department of the Que Warranto is the proper form of action. Mr. Interior their application for this charter, that necessarily includes a request to do this act, and all | this right to act de jure cannot be attacked o llatother acts which the law requires to be done in order to grat the application.

Mr. Whiting said the allegations contained in the petition were insufficient to entitle the plaintiff to the writ. There was no allegation of a demand upon the defendant, and demand and refusal are necessary as a condition precedent to relief by mandamus. If the Court decided the writ could not issue against an executive officer, it would also apply to this case. Suppose a petition for charter to have been filed with a former Minister of Interior, say Mr. Bush, could this defendant be held for omissions of Mr. Bush unless a demand were made of him to so do a duty of which as far as appears from pleading, de-

fendant may be ignorant. Refusal can be implied by lapse of time but demand cannot be implied. The object of petition discretion vested in him by law. All the authorimandamus may sometimes lie against an execu- ready for the steamer on her next trip. tsierial act required of him by law, yet such an officer to whom public duties are confided by law, is | credit on the parties who chose the site, it is stuck not subject to the control of the Courts in the exercise of the judgment and discretion which the law reposes in him as part of his official func-

He maintained that where the duty involved any discretion the writ would not lie. Charters do not issue as a right in this country. How could it be claimed under the constitution that this refusal affected the property of any one. A charter is a franchise as shown by section 1,439 of the Civil

In the case of Luddington vs. the Minister of the Interior decided in this Court in 1867 Chief Justice Allen ruled that "where discretionary power is vested in a Minister, such motion could not be granted, and that the language of the statute referred to is so clear and explicit in its grant of discretionary power that it regards its duty to deny

The Attorney-General defined the position of the respondent. That he depended entirely upon the construction of the Statute which he claimed left it discretionary with the Minister to act upon the petition or not, and that such discretion is absolute and untrammelled and not relative and reviewable yb a Court. He explained that Section 1442 of the Civil Code conferred absolute discretion upon the officer, leaving it to his judgment to act or not, while Section 1443, though almost as important as the former, conferred only a relative discretion, because there, upon certain statutory regulations and requirements being complied with, the law commands the officer to do a certain thing.

He also submitted to the Court that by the terms of the statute and from the necessity of the matter the discretion of the officer began with the filing of the application and ended with the submission to the King in Privy Council, otherwise it would be Letter Paper, in the power of the Minister to nulify the Act of the King and Privy Council, for should the latter grant the charter the Minister could delay it even then, unless the proposition of the respondent be

The power to grant such charters existed, originally, in the Legislature, and no power in the land could either force them to grant or deny it that power in all its plenitude and worth, the same power of discretion was delegated to the Minister, and no tribunal can take upon itself to direct him how to exercise that discretion. The wording of the statute admitted of no other construction and the Supreme Court would assume legislative powers were it to give to the statute any other construction. The Attorney-General alluded to the case of Luddington against the Minister of the Interior, decided by Justice Allen, a case in which the Court held that the Minister, having by the words of the statute, discretion to issue or not, refused, and the writ of mandamus was refused. though the words which conferred discretionary power in that statute were much weaker than in the statute before the Court.

In reply Mr. Hartwell said : The case in 9, Waller, holds that a judgment against a Secretary of the Interior is vacated by death, there being no proceeding to revive it against his successor, and that to bring suit against the successor. "some notice actual or constitutional is generally essential." The only object of a demand is to give notice before suit of what is expected. The law gives notice to a public officer of

what his public duty is. The case of Mahukaliilii et al, vs. Kikaalani Ho- BIRTHDAY CARDS. bron et al. Ejectment on exceptions. Mr. W. R. Castle for plaintiff, appellant; Messrs. Cecil Brown and R. F. Bickerton for defendants, respondents. Om motion of the Castle, who stated that neither he nor Mr. Bickerton were ready, and also that 

E. B. Thomas vs. Trustees Lunalilo estate. Appeal from judgment on award. Messrs.E.Preston and John Russell for plaintiff, respondent; Mr. S. B. Dole for defendant, appellants.

Mr. Presten read the judgment of the Court below and asked that the judgement be affirmed. Mr. Dole claimed that by the terms of the argument, the right of appeal is reserved, which takes the case out of the statute. The award does not follow the submission. Mr. Preston said the award must stand or fall as

a whole. This Court could not amend it. There the petition) by which the Minister "is required is nothing to show that the arbitrators have not The case is submitted.

W. M. Gibson, President of the Board of Health, vs. S. S. "Madras." Admiralty appeal, Mr. F. M. Hatch for libellant, appellant; Messrs. E. Preston and Cecil Brown for respondent.

Mr. Neumann, Attorney-General, stated that he had been added as counsel for the appellant, and out the world. It embraces also thoughts on Literary, asked that the case be continued to the January Term, as he had not had time to examine it prop-

The King vs. Ah Lin. Perjury. Mr. Austin Whiting, Deputy Attorney-General, for the Crown; Messrs Smith & Thurston for defendant. Mr. Hartwell was added as counsel for defendant, ap-Mr. Smith claimed that the indictment was not

presented by a duly qualified officer of the Crown, being by an Attorney-General ad interim. Mr. Hartwell claimed that a decision favorable

to appellant could not affect previous convictions. because this objection was not taken at the trial of those cases. To allow one person to fill several offices in the Cabinet, would be the same as if the Chief-Justice should act as first and second associate Judge also, or as if a juryman should represent other jurymen besides himself. The Constitution clearly provides that each office shall be represented by a separate official. cil are such applications, the same being in legal

Mr. Whiting, for the Crown, insisted that the question cannot be tried in an action of this kind Gibson was made a de facto Attorney-General, and terally in an action which he has no opportunity to properly contest. Indictments are only presented by the Attorney-General; they are found by the Justice presiding at the Term. Mr.Smith replied and the case was submitted.

The prisoner was allowed to go at large upon his bond to appear at ahe next January Term, on the 7th day of January next. The cases of Chas. A. Chapin vs. T. P. Tisdale

Chas. Notley vs. Theo. H. Davies; and the King vs. Makaweo, were argued and submitted.

### Island Notes.

HONORAA, HAWAII, December 14, 1883.

The weather in this district for the past week has been very unfavorable for work of all kinds, was to deprive the defendant of the powers and owing to the heavy rains which have continued up till to-day almost without intermission. The road ties cited by the learned counsel appeared to af- in some places are almost impassable. The wire-

construction at Honokaa does not reflect much on the brow of a hill fronting on to nowhere in particular, but it has one advantage, it is completely hid from public view.

December, 21, 1883. The weather for the past week has been one coninuous downpour of rain, the heavy southerly storm which visited other parts of the island did not reach Honokaa, but at Waipio and Kukuihaele considerable damage was done by blowing down several houses and injuring the cane. We learn from Waipio that several rice patches were entirley destroyed by the heavy wind and flood. The C R. Bishon arrived here last Tuesday evening from Hilo making the ran from Honolulu to that port in twenty-two hours. This little boat and her genial captain are both likely to become very popular in Honokaa. She had a full cargo up and takes a large cargo of sugar from here.

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-AND-

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NO. 1, VOLUME II. OF THE-

### ANGLICAN CHURCH CHRONICLE - WILL BE ISSUED -

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